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C O N F I D E N T I A L SECTION 01 OF 02 BAGHDAD 000153

SIPDIS

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TAGS: [PGOV](#) [PREL](#) [IZ](#)

SUBJECT: PARTY BLOC LEADERS SEEK TO FIT SQUARE PEG OF  
POLITICAL CONSENSUS SOLUTION INTO ROUND HOLE OF LEGAL  
PROCEDURE, TO SOLVE DE-BA'ATHIFICATION CONTROVERSY

REF: BAGHDAD 0147

Classified By: Acting POL M/C Yuri Kim, for reasons 1.4 (b) and (d).

¶1. (C) SUMMARY: Key political leaders continued to meet behind the scenes January 21 to develop a solution to the ongoing de-Ba'athification controversy. Badr bloc leader Hadi al-Amiri, the key Shi'a figure in the negotiations, continues to shop around the Ammar al-Hakim (ISCI) proposal (general elements described reftel). Providing an influential Sunni gloss on the plan, DPM Rafi'e al-Issawi told Acting POL M/C that the plan could be made to work on two conditions: the parties succeed in blending an undeclared political consensus approach with an arguably legal procedure to implement it, and the Shi'a drop their insistence on a pledge to the Constitution that denounces past Ba'athist crimes. IHEC Chairman Faraj al-Haydary described for poloffs a broad array of parties that had been affected by the de-Ba'athification list compiled by the Accountability and Justice Commission (AJC), and he estimated roughly that at least 50% of the list was Shi'a. Reading from a list, Haydary said IHEC analysis indicated: 72 from Allawi's Iraqiyya; 67 from Bolani,s Coalition of Iraq,s Unity; 24 from Maliki,s State of Law; 17 from ISCI and Badr; 20 from the Sadrist Trend; and 20 from Tawafuq/IIP. Mutlaq advisor and COR member Dr. Nada Ibrahim told poloff January 21 that all 72 of the Iraqiyya candidates would file appeals with IHEC. END SUMMARY.

#### POLITICAL TRACK

¶2. (C) Key political leaders continued to meet behind the scenes to develop a solution to the ongoing de-Ba'athification controversy. DPM Rafi'e al-Issawi, a key Sunni leader, described for Acting POL M/C January 21 a series of meetings he and Hadi al-Amiri were conducting with a range of senior political leaders, including PM Maliki. Amiri continues to shop around the Ammar al-Hakim (ISCI) proposal, the latest version of which we described in reftel. The latest elements in the plan, as described by Issawi, include:

-- Political consensus among the party blocs/coalitions two key items: to accept the disqualifications of "major" Ba'athist Party figures for whom there is proof of past membership and to replace them with non-Ba'athist candidates;

-- Using the seven-judge Cassation Chamber -- established a week ago to hear appeals of AJC decisions -- to provide legal cover -- for instructing IHEC to write the political parties/entities with such orders. (COMMENT: Having been dropped by the parties, these now-former candidates would have no recourse to the appeal process. At present, according to figures presented in the COR, there are some 225 such names on the list, according to Amiri, who would presumably be eliminated in this expedited manner. END COMMENT.); and

-- Allowing the candidacy of a much smaller number of candidates, either former major Ba'ath Party figures who can prove a record of opposition to the Saddam regime or candidates like Saleh al-Mutlaq and Dhafer al-Ani, against whom there are contemporary complaints of Ba'athist affiliation.

13. (C) However, Issawi insisted that the Sunni side would not accept the pledge of allegiance to the Constitution (and condemnation of past Ba'athist crimes), calling it an issue of dignity for the candidates and "the Sunni street." He noted that the party blocs, especially ISCI, were working feverishly behind the scenes to try to reach a deal before VPOTUS arrived, as no side wanted to appear to have been QVPOTUS arrived, as no side wanted to appear to have been pressured into a resolution. Issawi agreed that the Kurds needed to be brought on board sooner rather than later and sought Embassy help in getting Fuad Massoum to the table with him and Amiri, possibly as early as tonight. Issawi predicted that the Sunni street would accept the proposal as long as the "big names" (like Mutlaq) were allowed to run. The Shi'a street would likewise not overly object as long as the former senior Ba'athist members were not allowed to run. Issawi speculated that if Mutlaq was allowed to run and won a seat, political consensus would likely prevail and ensure that the appeals process did not kick him out.

LEGAL TRACK

14. (SBU) Even as political talks continue, separate action on the legal track is moving forward. President Talabani told the Ambassador over lunch January 21 (their second meeting in as many days) that he would meet with VP Adel Abd

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al-Mahdi, who had arrived back in Baghdad, to discuss next steps. These steps would include seeking a Supreme Court opinion to invalidate the AJC and its list of over names. The Ambassador is set to meet with Mahdi later this evening. Talabani was quoted in the press today stating that the Presidency Council has written to the Supreme Court asking whether the AJC had the legal authority to issue the list banning candidates. He was also quoted describing a high-level, Presidential panel that will study whether the AJC acted properly.

15. (U) In a somewhat unexpected development January 21, COR contacts provided poloffs with a copy of a letter from the Council of Ministers, dated January 17, that seemed to question the legality of the Accountability and Justice Commission's (AJC's) actions. The language in the letter is turgid, but Embassy legal advisor believes that the intent of the letter is to raise questions about the statutory authority of the letter. It is unclear how this letter might impact the Hakim/Amiri proposal and Presidency Council efforts.

IHEC CHAIRMAN ON APPEALS PROCESS

16. (C) IHEC Chairman Faraj al-Haydari (KDP) appeared in good spirits after a brief hospitalization January 20. He told poloffs January 21 that the mood at IHEC is good now that efforts are underway to accept appeals to IHEC, January 19 decision to eliminate over 500 candidates under de-Ba'athification requirements. Haydari told poloffs that appeals would first be reviewed by the Electoral Judicial Panel (the three-judge panel designated for IHEC appeals), and then, if needed, candidates could appeal to the seven-judge Cassation Chamber designated to review decisions by the Accountability and Justice Commission (AJC). Haydari predicted to poloffs that the process would be expedited and require a maximum of two weeks to complete. He also noted that the Prime Minister's building, next door to IHEC, had already prepared office space to facilitate quick work by the appeals panel. He expressed confidence that IHEC would

complete the candidate list as soon as overall review of the candidate names was complete.

17. (C) Mutlaq advisor and COR member Dr. Nada Ibrahim told poloff January 21 that all 72 of the Iraqiyya candidates will file appeals with IHEC. She added that Mutlaq was offering to pay the legal fees for any candidates from his party that needed assistance for the appeals. (NOTE: Issawi acknowledged to Pol/C that he had not been able to brief Allawi on the Amiri plan sound out his support. END NOTE.)

FURTHER REVISIONS TO THE LIST; DEFMIN OFF AGAIN  
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18. (C) The AJC sent some small adjustments to the list of 514 names on January 20 which resulted in the removal of three candidates, including the Defense Minister Abd al-Qadir al Mufrigi al-Ubaidy. However, Thafer Al-Ani -- the head of DPM Issawi's National Future Gathering -- remained on the list, and he had expressed frustration on this point to Haydary personally. Haydari told poloffs that he replied to Ani that "this was not a matter for IHEC" and that he should present his case through the appeals process.

BREAKING THE LIST DOWN A BIT  
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19. (U) Haydary noted a broad array of parties had been affected by the de-Ba,athification list, and he estimated that at least 50% of the list was Shi'a. Haydari said that IHEC analysis indicated: Iraqiyya List had 72 candidates on the list (reftel); Bolani,s Coalition of Iraq,s Unity had 67 names; Maliki,s State of Law list had 24 names; ISCI-Badr had 17 names; the Sadrists had 20 names; Kurdish bloc had 18 names; Tawafuq/IIP had 20 names; and even the Communist Party had 6 names.  
HILL